Human rights and medical ethics

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A modern democratic society functions as a result of a consensus between members of different philosophical traditions and is based on the principles of equality and social justice. Human rights and medical ethics are two disciplines within this overall philosophy, each with its own history and methodology. This paper examines the similarities and differences between them.

HUMAN RIGHTS

Human rights give the fundamental protections that allow equal participation in a democracy. They prevent the worst excesses of democracy because no society can vote to take away these rights. When someone has a right, another person or institution (an agent) has a duty to comply with that right. This may be a moral right, where there is a corresponding moral duty, or a legal right, where there is a legal agreement that the right exists. For the purposes of this paper, the term human rights will be used to describe rights that are enshrined in international agreements by which states agree not to breach specific sets of them.

It is possible to find references to some of the concepts that later became those of human rights in such documents as the *Code of Hammurabi* (1780 BCE) and Aristotle's *Nichomachean Ethics* (330 BCE). One of the first legal instruments in the UK covering human rights issues was Magna Carta (1215). Up to this point the sovereign's word was law, so justice was at best arbitrary. As a consequence of Magna Carta, men of property gained some rights against the absolute rule of the king. However, the balance between human rights and the Divine Right of Kings was still being debated at the time of the English Civil War (1642–1651). Most commentators agree that human rights as we understand them started around this time, particularly with John Locke.[1]

Underlying the concept of human rights is the principle that people have inherent rights simply because they are human. It was the Renaissance that brought forth the idea that all men were equal—a notion that could stem either from religious arguments or from secular humanist philosophy. Locke, writing during the Civil War, supported the people's right to change their monarch if he acted against the common good. He was trying to form a middle ground between the radical views that would now be called communist, such as those of Gerrard Winstanley of the Diggers, and the conservative views exemplified by Thomas Hobbes. In *Leviathan* (1651) Hobbes argued that civil wars are so damaging to all concerned that any form of stable society, however totalitarian, was to be preferred. He described the 'State of Nature' in which humans coexisted before the first societies had developed, contrasting this with a situation of anarchy in which life was 'nasty, brutish and short'.[2] Locke, by contrast, argued that 'no one ought to harm another in his life, health, liberty or possessions'.[3] In his view, from the state of nature man started to cooperate and develop a more structured society.

Jean-Jacques Rousseau turned Locke's idea into a much more complex 'social contract' (1762), which said that man exchanged the right to self-protection for more subtle rights.[4] Such a contract almost certainly never took place anywhere, but it is a useful way to conceptualize civil society. In order to survive successfully, modern democratic societies rely on an overlapping consensus. That is to say, although different social groupings—for example, religious or political associations—have different concepts of the good, they can agree on some fundamental principles.[5] Competent adults are autonomous, meaning that they can make their own decisions and accept the consequences of those decisions, positive or negative. Members of society are to be treated equally, and resources should be allocated on the basis of need. Thus there is an agreed concept of social justice, with its application debated openly in society. These ideas culminated in the American Declaration of Independence (1776) and the French Declaration of the Rights of Man and the Citizen (1789).[6]

The next major change was precipitated by the horrors of the Second World War, when it was recognized that rights must be enforceable and that states cannot be relied on to protect the rights of minorities. Thus a system of international agreements was slowly built up, starting with the Universal Declaration of Human Rights in 1948. Although these have the force of international law, they are largely ignored except by organizations such as Amnesty International, which use them to 'name and shame'. Regional agreements were also developed, the most effective of which was the European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, which can be enforced in the

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European Court of Human Rights. This was active in the UK for 50 years before it was finally incorporated into domestic legislation in the Human Rights Act 1998.

Human rights thus relate to the individual and put limits on what a state can do to that person. They are independent of the state, so even in a democratic state there cannot be a vote to take away anyone's human rights. Some rights are absolute, such as the right not to be held in slavery. Some are qualified, such as the right to liberty, which permits detention if certain procedures are followed. Others, mostly social, economic and cultural, require a state to 'strive' to achieve them. The right to healthcare is well-established, encompassing not only the delivery of basic clinical services but also an environment that allows good health to flourish.[7] A right can entail a negative duty, such as not torturing the person, or a positive duty such as providing legal representation during a trial. Only states, not individuals, are subject to international human rights law.

Even at the start, the concept of rights was criticized by many. Jeremy Bentham, for example, described human rights in general and the French Declaration in particular as 'nonsense on stilts' because, amongst other reasons, respect for rights would not always maximize utility, and because rights were meaningless unless legally enforceable.[8] However, few rights are absolute. No one person's rights are so strong as to deny those of another or to undermine the democratic process. However, rights are generally considered to 'trump' other interests[9]—that is to say, where there is a conflict of interests, any argument that incorporates rights will defeat one that does not.

MEDICAL ETHICS

Medical ethics has a very different history, starting with the Hippocratic school in ancient Greece. The members of this school were attempting to set themselves apart from the myriad other healers by stressing that their pursuits were rational and scientific rather than magical or religious. The code provided rules for both the doctor–patient relationship and professional etiquette.

Hippocrates lived around 460–380 BCE. Many texts are ascribed to him, but he could not possibly have written all of them. His Oath probably dates back to the time of his life or shortly after, although its first recorded use is some 400 years later.[10] By the beginning of the Renaissance in the early 16th century, the rediscovery of the medical writings of antiquity was complete and was beginning to be challenged by scientific investigators.[10]

John Gregory was lecturing on medical ethics as Professor of Practice of Physic in Edinburgh and published his lectures just before dying in 1773. He redefined medical humanism in the context of the Scottish Enlightenment of philosophers such as his friend David Hume. Opposing Hobbes' *Leviathan*, which considered the only human motivation to be narrow self-interest, Hume wrote that man was motivated not only by reason but also by compassion. Thus we all share a common morality, based both on our emotions and on our rationality.[11] Gregory portrayed medicine as an art based on virtues, especially that of sympathy. Like Hippocrates, he wanted to set doctors apart from untrained healers who were interested only in getting money from patients. This instituted the ideal, still current today, of the humanistic physician whose effectiveness derives both from empathy and from medical science.[12]

Contemporary bioethics is a collaboration between philosophers of different theoretical schools. One school, the deontologists, uses a rule-based theory following principally on the works of Kant. The other main school is the utilitarian. Utilitarianism follows from the works of Bentham and judges actions by their consequences.

The outcome of these deliberations was an ethic based on four principles—autonomy, justice, non-maleficence and beneficence.[13] The same process was used as for the overlapping consensus, albeit much more overtly, and the first two principles are held in common with it. Non-maleficence goes back to Hippocrates, and the principle of not deliberately harming another person is the cornerstone of rectificatory justice. However, beneficence is unique to biomedical ethics. The principle is not relevant to human rights, since rights do not rely on a person's good will.

DIFFERENCES

Thus there are two fundamental differences between human rights and medical ethics. One is that the focus is on state-level action rather than a person-to-person relationship. The other is the issue of benevolence, which is important in the theory of biomedical ethics but has no place in human rights discourse. Rights do not depend on the empathy of other actors.

One conflict between human rights and medical ethics has been in court cases where the rule of law, an essential part of democratic society, requires medical confidentiality to be breached. Patients expect confidentiality to be absolute, otherwise they would not trust doctors with their intimate details, and medical ethics require that this information is protected as far as possible. Human rights, however, demand that justice takes priority and doctors know that, despite great reluctance, they may be obliged to disclose confidential information to a court. Thus issues of social justice—the punishment of those who have committed a serious crime—outweigh medical confidentiality.

In psychiatry, many patients are considered to lack competence as a consequence of their medical condition. Thus formal medical ethics falls back on beneficence to decide how patients should be treated. As society has

increasingly rejected paternalism, a model based on human rights is replacing it which encourages patients to be involved in decisions about their care, making use of whatever capacity they have, and providing legal frameworks to allow clinical decisions to be reviewed regularly.[14]

CONCLUSIONS

Human rights and medical ethics are parallel mechanisms, the former working at the sociopolitical level and the latter more at the level of the doctor–patient relationship. Human rights place a duty on the state and on healthcare providers to comply with minimum standards. Medical ethics place a duty on individual doctors to comply with parallel standards. Human rights and medical ethics are complementary, and use of the two together maximizes the protection available to the vulnerable patient.

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